

Thameez Nisha Hasseem (as administrator for the estate of Bee Fathima, deceased) v Anitha Farhana bt Sharbudeen (as administrator for the estate of RKM Sharbudeen a/l RKM Mohamed Abu Backer, deceased) & Anor

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO
W-02(NCVC)(W)-2068–11 OF 2016
ROHANA YUSUF, VERNON ONG JJCA AND YEOH WEE SIAM J
13 SEPTEMBER 2017

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Land Law — Title — Indefeasibility of title — Claim on property by beneficiary of deceased — Allegation that land deceitfully and fraudulently transferred property utilising false deed of assignment — Whether registration of transfer in Form 14A valid — Whether ought to be set aside under s 340(2) of the National Land Code

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This was an appeal by the appellant against the decision of the High Court given which dismissed the appellant's claim against the first and second respondents with costs. According to the appellant's case, Bee Fathima ('the deceased') passed away on 23 February 1993 in India leaving behind the appellant and her four siblings, one of whom was RKM Sharbudeen ('RKM Sharbudeen'), her brother. RKM Sharbudeen passed away on 13 January 2014 in India leaving behind four children and beneficiaries, one of whom was the first respondent, the administrator of the estate of RKM Sharbudeen. According to the appellant, the deceased had purchased a piece of property from the second respondent and the full purchase price was paid by the deceased during her life time. Sometime in 2010, the second respondent transferred the property to RKM Sharbudeen on behalf of the deceased. The appellant alleged that the first respondent deceitfully and fraudulently caused the second respondent to transfer the property to RKM Sharbudeen by utilising a false deed of assignment. The first respondent and her family have since been occupying the property. The appellant, applied, inter alia, for the following reliefs: (a) a declaration that the deed of assignment dated 10 December 1992 purportedly made between the deceased as assignor of the one part and RKM Sharbudeen as assignee of the other part in respect of the property was invalid, null and void and the same be set aside forthwith; (b) a declaration that the transfer in Form 14A dated 26 October 2010 of the property and the registration thereof from the second respondent, as the developer and registered proprietor of the property, as transferor, to RKM Sharbudeen, as the transferee, pursuant to the deed of assignment is invalid, null and void and the same be set aside forthwith; and (c) an order that the second respondent do execute a transfer in Form 14A of the property to the

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- A appellant in her capacity as the administratrix of the estate of the deceased pursuant to cl 10(3) of the SPA dated 21 May 1973 made between the second respondent, as the vendor of the one part, and the deceased, as the purchaser of the other part. The High Court held that, inter alia, the registration of the transfer in Form 14A dated 26 October 2010 and registered on 6 December 2010 was valid and not liable to be set aside under s 340(2) of the National Land Code ('the NLC'). Hence, the present appeal.
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Held, dismissing the appeal with costs:

- C (1) The deed of assignment was valid and the assignment of the property by the deceased, as assignor, to RKM Sharbudeen, as assignee, was valid. The deed of assignment was an 'instrument' within the meaning of ss 2, 4(1) and 4A(1) of the Stamp Act 1949 pursuant to which 'duty' is chargeable as specified in the First Schedule. The appellant bore the burden of proving that ad valorem duty was chargeable on the deed of assignment.
- D It was incumbent upon the appellant to call the collector as a witness to confirm that ad valorem duty must be paid for the deed of assignment and not just a nominal duty. In the absence of such evidence from the collector, it was not wrong for the JC to accept the deed of assignment on the face of the document that the duty chargeable thereon was the nominal duty that had already been paid for the said deed (see paras 21–22).
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- F (2) The JC had rightly made the finding of facts and came to the conclusion that the instrument of transfer in this case was the Form 14A dated 26 October 2016 and ad valorem stamp duty had in fact been charged on the instrument of transfer upon proper adjudication and had been duly paid for to effect the transfer of the property from the second respondent to RKM Sharbudeen. Therefore, there was no reason why the transfer ought not to have taken effect, as under the Stamp Act, stamp duty is imposed on the instrument and not on a transaction (see para 28).
- G
- H (3) Section 340 of the NLC offers protection to a registered title. The property herein had already been registered in the name of RKM Sharbudeen and he had obtained indefeasibility of title under s 340(1) of the NLC. The only way that such indefeasibility of title could be defeated is to mount a challenge if there exists any of the exceptions laid down in s 340(2) of the NLC. However, the appellant had not challenged the indefeasibility of title of RKM Sharbudeen under the exceptions provided in s 340(2) of the NLC. The appellant would not be able to rely on the exceptions in the case of fraud or forgery as provided in s 340(2)(a) and (b) of the NLC respectively (see paras 29 & 33).
- I
- (4) The deed of assignment was not a conveyance document as envisaged in ss 215, 217, 218, and in particular, s 340(2) of the NLC. Thus, the transfer of the property by the second respondent to RKM Sharbudeen

could not be invalidated by questioning the validity of the deed of assignment which was not the conveyance document (see para 34).

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[Bahasa Malaysia summary]

Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi yang menolak tuntutan perayu terhadap responden pertama dan kedua dengan kos. Menurut kes perayu, Bee Fathima ('si mati') meninggal dunia pada 23 Februari 1993 di India meninggalkan perayu dan empat saudara kandungnya, salah seorangnya ialah RKM Sharbudeen ('RKM Sharbudeen'), saudara lelakinya. RKM Sharbudeen meninggal dunia pada 13 Januari 2014 di India meninggalkan empat orang anak dan benefisiari, salah seorang daripada mereka adalah responden pertama, pentadbir harta pusaka RKM Sharbudeen. Menurut perayu, si mati telah membeli sebidang hartanah daripada responden kedua dan harga belian penuh telah dibayar oleh si mati semasa hayatnya. Pada tahun 2010, responden kedua memindah milik hartanah tersebut kepada RKM Sharbudeen bagi pihak si mati. Perayu mendakwa responden pertama, secara memperdaya dan menipu, menyebabkan responden kedua memindah milik hartanah tersebut kepada RKM Sharbudeen dengan menggunakan surat ikatan penyerahakkan yang palsu. Responden pertama dan keluarganya telah menduduki harta tersebut. Perayu, memohon, antara lain, relif-relif berikut: (a) deklarasi bahawa surat ikatan penyerahakkan bertarikh 10 Disember 1992 yang kononnya dibuat antara si mati sebagai penyerahakkan di satu bahagian dan RKM Sharbudeen sebagai penerima di satu lagi bahagian lain berkenaan hartanah tersebut tidak sah dan terbatal dan agar ini diketepikan dengan serta-merta; (b) deklarasi bahawa pindah milik dalam Borang 14A bertarikh 26 Oktober 2010 hartanah tersebut dan pendaftarannya daripada responden kedua, sebagai pemaju dan tuan punya berdaftar hartanah tersebut, sebagai pemindah milik, kepada RKM Sharbudeen, sebagai penerima pindah milik, menurut surat ikatan penyerahakkan tidak sah dan terbatal dan agar ini diketepikan dengan serta-merta; dan (c) perintah bahawa responden kedua melakukan suatu pindah milik dalam Borang 14A hartanah tersebut kepada perayu dalam kapasitinya sebagai pentadbir harta pusaka si mati menurut klausa 10(3) PJB bertarikh 21 Mei 1973 dibuat antara responden kedua, sebagai penjual di satu pihak, dan si mati, sebagai pembeli di satu pihak lain. Mahkamah Tinggi berpendapat bahawa, antara lain, pendaftaran pindah milik dalam Borang 14A bertarikh 26 Oktober 2010 dan didaftarkan pada 6 Disember 2010 adalah sah dan tidak boleh diketepikan di bawah s 340(2) Kanun Tanah Negara ('KTN'). Oleh itu, rayuan ini.

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Diputuskan, menolak rayuan dengan kos:

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- (1) Surat ikatan penyerahakkan adalah sah dan penyerahan hak hartanah oleh si mati, sebagai penyerah hak, kepada RKM Sharbudeen, sebagai pemegang serahhak adalah sah. Surat ikatan penyerahakkan adalah 'instrumen' dalam pengertian ss 2, 4(1) dan 4A(1) Akta Setem 1949 di

- A mana ‘duti’ boleh dikenakan sebagaimana dinyatakan dalam Jadual Pertama. Perayu memikul beban membuktikan bahawa duti ad valorem dikenakan atas surat ikatan penyerahakkan. Menjadi kewajipan perayu untuk memanggil pemungut sebagai saksi untuk mengesahkan bahawa duti ad valorem mesti dibayar untuk surat ikatan penyerahakkan dan bukan hanya duti nominal. Tanpa keterangan sedemikian daripada pemungut, tidak salah bagi JC untuk menerima surat ikatan penyerahakkan, berdasarkan dokumen bahawa duti yang dikenakan adalah duti nominal yang telah dibayar untuk surat ikatan tersebut (lihat perenggan 21–22).
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- C (2) PK telah membuat penemuan fakta dan membuat kesimpulan bahawa instrumen pindah milik dalam kes ini adalah Borang 14A bertarikh 26 Oktober 2016 dan duti setem ad valorem sebenarnya telah dikenakan atas instrumen pindah milik selepas adjudikasi wajar dan telah dibayar dengan sewajarnya untuk melaksanakan pindah milik hartanah tersebut daripada responden kedua kepada RKM Sharbudeen. Oleh itu, tidak ada sebab kenapa pindah milik tidak berkuatkuasa, kerana di bawah Akta Setem, duti setem dikenakan atas instrumen dan bukan pada transaksi (lihat perenggan 28).
- D
- E (3) Seksyen 340 KTN memberi perlindungan pada hak milik berdaftar. Hartanah ini telah pun didaftarkan atas nama RKM Sharbudeen dan dia memperoleh hak milik tak boleh sangkal di bawah s 340(1) KTN. Satu-satunya cara ketidakbolehsangkalan hak milik boleh ditewaskan ialah dengan mencabar jika terdapat sebarang pengecualian yang ditetapkan di dalam s 340(2) KTN. Walau bagaimanapun, perayu tidak mencabar ketidakbolehsangkalan hak milik RKM Sharbudeen di bawah pengecualian yang diperuntukkan di dalam s 340(2) KTN. Perayu tidak dapat bergantung pada pengecualian dalam kes penipuan atau pemalsuan seperti yang diperuntukkan dalam s 340(2)(a) KTN (lihat perenggan 29 & 33).
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- G (4) Surat ikatan penyerahakkan bukanlah dokumen konveyans seperti yang dijelaskan dalam ss 215, 217, 218, dan khususnya, s 340(2) KTN. Oleh itu, pindah milik harta oleh responden kedua kepada RKM Sharbudeen tidak dapat dibatalkan dengan mempersoalkan kesahihan surat ikatan penyerahakkan yang bukan dokumen konveyans (lihat perenggan 34).]
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Notes

- I For cases on indefeasibility of title, see 8(2) *Mallal’s Digest* (5th Ed, 2017 Reissue) paras 5792–5798.

Cases referred to

PPB Group Bhd v Pemungut Duti Setem [2011] 9 MLJ 145, HC (distd)
Pemungut Duti Setem v BASF Services (Malaysia) Sdn Bhd [2009] 5 MLJ 348;
 [2010] 4 CLJ 556, CA (refd)
Rajamani alp Meyappa Chettiar v Eng Beng Development Sdn Bhd & Ors [2016]
 3 MLJ 660, CA (refd)
Tan Chiw Thoo v Tee Kim Kuay [1997] 2 MLJ 221, FC (refd)

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Legislation referred to

National Land Code ss 215, 217, 218, 340, 340(1), (2), (2)(a), (2)(b),
 Form 14A
 Stamp Act 1949 ss 2, 4, 4(1), 4A, 4A(1), 16, First Schedule, Item 32(a)

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Appeal from: Civil Suit No 22 NCVC-229-05 of 2015 (High Court, Kuala Lumpur)

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Mahinder Singh Dulku (Mohd Iqbal Zainal Abidin with him) (Megat Iqbal & Co) for the appellant.

T Gunaseelan (Ravin Vello with him) (Gulnaseelan & Assoc) for the first respondent.

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Yap Lai Lian (KB Chua & Co) for the second respondent.

Yeoh Wee Siam J:

INTRODUCTION

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[1] This is an appeal by the plaintiff/appellant ('the appellant') against the decision of the High Court given on 12 October 2016 which dismissed the appellant's claim against the first defendant/first respondent ('the first respondent') and the second defendant/second respondent ('the second respondent') with costs of RM35,000 to the first respondent and RM25,000 to the second respondent.

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BRIEF FACTS

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[2] According to the appellant's pleaded case, Bee Fathima, the deceased ('the deceased'), passed away on 23 February 1993 in India leaving behind the appellant and her four siblings one of whom was RKM Sharbudeen a/l RKM Mohamed Abu Backer ('RKM Sharbudeen'), her brother.

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[3] RKM Sharbudeen passed away on 13 January 2014 in India leaving behind four children and beneficiaries one of whom is the first respondent, the administrator of the estate of RKM Sharbudeen.

A [4] According to the appellant, the deceased had purchased the property known as Lot No 311, 2nd Floor, Ampang Park Shopping Centre ('property') from the vendor/developer ('developer'), ie the second respondent, by a sale and purchase agreement ('SPA') dated 21 May 1973 (*RR Jld 3 Bhg C* pp 247–272), and the full purchase price was paid by the deceased during her life time. Sometime in 2010, the second respondent transferred the property to RKM Sharbudeen on behalf of the deceased.

C [5] The appellant alleged that the first respondent deceitfully and fraudulently caused the second respondent to transfer the property to RKM Sharbudeen by utilising the false deed of assignment ('deed of assignment') (*RR Jld 3 Bhg C* pp 280–283) purportedly made by the deceased on 10 December 1992 before a notary public in the Tiruvarur District, Tamil Nadu, South India.

D [6] As a consequence of the alleged fraud committed by the first respondent, the second respondent transferred the property to RKM Sharbudeen by way of a Form 14A dated 26 October 2010 (*RR Jld 3 Bhg C* pp 310–313) which was registered on 6 December 2010. The first respondent and her family have since been occupying the property.

THE APPELLANT'S CLAIM

F [7] The appellant, in para 13 of her amended statement of claim (*RR Jld 1 Bhg A* pp 44–50) applied, inter alia, for the following reliefs:

- G (a) a declaration that the deed of assignment dated 10 December 1992 purportedly made between the deceased as assignor of the one part and RKM Sharbudeen as assignee of the other part in respect of the property is invalid, null and void and the same be set aside forthwith;
- H (b) a declaration that the transfer in Form 14A dated 26 October 2010 (Presentation No 48216/2010) of the property and the registration thereof from the second respondent, as the developer and registered proprietor of the property, as transferor, to RKM Sharbudeen, as the transferee, pursuant to the deed of assignment is invalid, null and void and the same be set aside forthwith;
- I (c) an order that the second respondent do execute a transfer in Form 14A of the property to the appellant in her capacity as the administratrix of the estate of the deceased pursuant to cl 10(3) of the SPA dated 21 May 1973 made between the second respondent, as the vendor of the one part, and the deceased, as the purchaser of the other part.

AGREED ISSUES TO BE TRIED BEFORE THE HIGH COURT

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[8] The learned judicial commissioner ('JC') summed up the agreed issues for trial before him as follows:

(i) Whether the deed of assignment dated 10 December 1992 was duly executed by Bee Fathima and attested by RS Rajakumar, advocate and notary practicing (*sic*) in Tiruvarur, South India.

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(i) Whether s 114(g) of the Evidence Act 1950 ought to be invoked against the first defendant for refusal to produce the original deed of assignment for inspection and examination by the expert witness.

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(ii) Whether the said deed of assignment is invalid for any other reasons.

(iii) Whether the said deed of assignment is invalid under s 4A of the Stamp Act 1949.

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(iv) If the answer to issue No (i) is in the negative and the rest of the issues are in the affirmative, that is the said deed of assignment is void and/or invalid, it therefore follows that the transfer in Form 14A dated 26 October 2010 and registered on 6 December 2010 is void and liable to be set aside under s 340(2) of the National Land Code in the hand of the estate of Bee Fathima, the deceased.

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(See grounds of judgment of the High Court at *RR Jld 1 Bhg A* pp 22–23).

DECISION OF THE HIGH COURT

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[9] Regarding issues (i), (ii) and (iii) above, the learned JC held that the appellant had not discharged the burden of proving that the deed of assignment is a forgery.

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[10] Regarding issue (iv) above, the learned JC held that the deed of assignment was stamped with the nominal value of stamp duty. Even though the appellant contended that the deed of assignment is void, invalid and has no effect because no ad valorem stamp duty was paid as required under s 4A of the Stamp Act 1949, the learned JC held that apart from alleging that only nominal value of stamp duty was paid on the deed of assignment, the appellant did not call any witness to adduce evidence as to what was the actual stamp duty payable on transfer of the property transacted with the deed of assignment.

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[11] The learned JC then stated the following:

(27) Whilst it may be true that the deed of assignment was stamped with the nominal value of stamp duty, the transfer was only effected via the memorandum of

A transfer dated 26 October 2010 (exh D19) which was duly registered and presented on 6 December 2010 vide Presentation No 48216/2010 (exh P10).

(28) Based on the authorities furnished by both parties, I am incline (*sic*) to agree with the second defendant's counsel that it is the memorandum of transfer and not the deed of assignment, which is the instrument of transfer chargeable with ad valorem stamp duty as can be seen in exhibits in D20 and D21.

B (29) That being the case, the plaintiff's submission that no proper and valorem stamp duty was paid for the assignment made by way of P6 is totally flawed and without basis.

C [12] Finally, the High Court held that in view of the answers to issues (i)–(iv) are all in the negative, the registration of the transfer in Form 14A dated 26 October 2010 and registered on 6 December 2010 is valid and not liable to be set aside under s 340(2) of the National Land Code ('the NLC').

D THE ISSUE BEFORE THIS COURT

[13] At the outset of the hearing before this court on 1 June 2017, learned counsel for the appellant informed us that he would confine the appeal to only one issue for our determination, namely whether the learned JC is right in holding that deed of assignment (exh P6), which was made outside Malaysia is not an instrument as defined in s 2 of the Stamp Act 1949, and whether it is void for want of payment of ad valorem duty as required by s 4A read with s 16 of the Stamp Act 1949 and Item 32(a) of the First Schedule to the same Act, and further, whether the transfer under the NLC is invalidated for that reason.

DELIBERATION AND DECISION OF THIS COURT

G [14] The main submission of learned counsel for the appellant was that ad valorem duty had not been paid and hence the deed of assignment would be a void instrument to effect the transfer of the property as it would cause invalidity to Form 14A, the conveyance document effecting the transfer of the property to RKM Sharbudeen for whose estate the first respondent is the administrator.

H *The relevant provisions of the Stamp Act 1949*

[15] As submitted by learned counsel for the appellant, the following provisions of the Stamp Act 1949 are relevant and ought to be considered:

I S 2:

'instrument' 'includes every written document'; and

'duty' means 'any stamp duty for the time being chargeable under this Act or under any written law';

S 4(1):

4 Instruments chargeable with duty

- (1) Subject to this Act and subject to the exemptions contained in this Act and in any written law for the time being in force, the several instruments specified in the First Schedule shall, from and after the commencement of this Act, be chargeable with the several duties specified in such Schedule.’;

S 4A(1):

4A Stamp duty on instruments executed outside Malaysia effecting transfers of property in Malaysia

- (1) Any instrument executed outside Malaysia and purporting to effect a transfer of any immovable property, or of any movable property other than debentures issued by, or shares in, a company, shall, if the property intended to be transferred is situated in any part of Malaysia, be chargeable with stamp duty in accordance with the First Schedule, and unless the instrument of transfer, or a counterpart or duplicate thereof which shall be chargeable with the like duty as if it were the original, is brought into Malaysia and the proper stamp duty payable thereon as if the original had been executed in Malaysia is paid, the transfer shall not take effect;

Items 32(a), 32(h) and 46 of the First Schedule to the Stamp Act 1949

32 CONVEYANCE, ASSIGNMENT, TRANSFER OR ABSOLUTE BILL OF SALE:

- (a) On sale of any property (except stock, shares, marketable securities and accounts receivables or book debts of the kind mentioned in paragraph (c))

For every RM100 or fractional part of RM100 of the amount of the money value of the consideration or the market value of the property, whichever is the greater—

- (i) RM1.00 on the first RM100,000.00;
(ii) RM2.00 on any amount in excess of RM100,000 but not exceeding RM500,000;
(iii) RM3.00 on any amount in excess of RM500,000.

- (h) Of any property by way of gift (whether by way of voluntary disposition or otherwise)

See Gift and Section 16(1).

46 GIFT

See Section 16(1).

S 16(1) and 16(3):

16 Voluntary conveyance *inter vivos*

- (1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale.

...

- A (3) Any conveyance or transfer, not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration, shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos*, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.
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Submissions of the appellant

- D [16] Learned counsel for the appellant submitted that from a reading of the relevant provisions of the Stamp Act 1949 as set out above, it is absolutely clear that:
- E (a) the deed of assignment is a gift and voluntary settlement and an instrument chargeable with payment of ad valorem stamp duty;
- F (b) failure to pay the ad valorem stamp duty rendered the deed of assignment invalid, null and void and have no effect and, to borrow the words used in s 4A of the said Act, the assignment or 'the transfer shall not take effect', which means that the deed of assignment is not recognised as a valid document under the law.
- G [17] Learned counsel for the appellant relied on the High Court decision in *PPB Group Bhd v Pemungut Duti Setem* [2011] 9 MLJ 145 which dealt with the application of Item 32(a) of the First Schedule read with s 16 of the Stamp Act 1949.
- H [18] In that case, the collector for stamp duties imposed ('collector') the payment of ad valorem stamp duty on the instrument involved, namely the memorandum of transfer, and the parties who were involved in the instrument objected and contended that only a nominal stamp duty of RM10 is payable. Rohana Yusof J (as Her Ladyship then was) rejected the contention that only nominal stamp duty was payable and held that ad valorem stamp duty is payable as provided for by ss 4 and 16 read with item 32(a) of the said Act. This is what the court said at paras 7 and 12 of the judgment:
- I [7] Looking at s 16, I agree with the contention of the respondent that payment in specie is a voluntary disposition *inter vivos* as contemplated under s 16(1) and (3) of the Act. In my view s 16(3) has been worded very widely to cover a transfer based on payment in specie. This is because s 16 provides that where any conveyance or transfer is not a disposition made in favour of a purchase or incumbrancer or other person in good faith and for valuable consideration, it shall be deemed to be a

- conveyance or transfer operating as a voluntary disposition inter vivos. It is obvious that the transfer in the present case is not made in favour of purchaser or incumbrancer and other person in good faith. Thus using this provision the transfer in this case is disposition inter vivos. A
- ...
- [12] In my view there is no issue of expanding the definition of sale here. What happens in fact is that the respondent in determining the stamp duty under s 4 was reading this clause subject to all the provisions of the Act including s 16. In applying s 16 the respondent found that the transaction involved falls under s 16 because it is a voluntary disposition inter vivos. Hence these transfers are caught by s 16(3). This is because s 16(3) says disposition made in favour of a purchaser or incumbrancer in good faith and with valuable consideration is deemed to be voluntary disposition inter vivos. B C
- [19] Learned counsel for the appellant then submitted that in the present case, the second respondent transferred the property to RKM Sharbudeen pursuant to the deed of assignment because the second respondent accepted RKM Sharbudeen as the beneficial owner of the property by reason of the absolute assignment of the property by the deceased to RKM Sharbudeen pursuant to the deed of assignment. Therefore, the learned JC had misdirected himself in holding that the deed of assignment is not an instrument within the meaning of the various relevant provisions of the Stamp Act 1949, and the learned JC came to the wrong finding or conclusion that no ad valorem stamp duty is payable on the deed of assignment. D E F
- [20] Learned counsel for the appellant further submitted that the learned JC ought to have held that the deed of assignment is an instrument within the meaning of the Stamp Act 1949 and therefore is chargeable with ad valorem stamp duty. As this was not done, the learned JC ought to have held that the deed of assignment is void and accordingly set aside the transfer in Form 14A of the property by the second respondent in favour of RKM Sharbudeen pursuant to the void deed of assignment. G
- [21] With respect to the learned JC, we agree with the submission of learned counsel for the appellant that the deed of assignment is an 'instrument' within the meaning of ss 2, 4(1) and 4A(1) of the Stamp Act 1949 pursuant to which 'duty' is chargeable as specified in the First Schedule. Similarly, we agree that the decision in *PBB Group Bhd* in regard to payment of ad valorem duty on the instrument involved. However, we are of the view that *PBB Group Bhd* ought to be distinguished for the reason that the instrument involved in that case is a memorandum of transfer, and not a deed of assignment as in the present case. Thus, for the purposes of the present case, it cannot be concluded that based on *PBB Group Bhd*, ad valorem duty is chargeable on a deed of assignment. H I

A [22] Having said that, we however agree with the learned JC that the
appellant bears the burden of proving that ad valorem duty is chargeable on the
deed of assignment. Learned counsel for the appellant submitted that it is
merely a question of law and there is no necessity to prove the amount of duty
chargeable on the deed of assignment. With respect, we are of the view that it
B is incumbent upon the appellant to call the collector as a witness to confirm
that ad valorem duty must be paid for the deed of assignment, and not just a
nominal duty as in this case. In the absence of such evidence from the collector,
it is not wrong for the learned JC to accept the deed of assignment on the face
C of the document that the duty chargeable thereon is the nominal duty that has
already been paid for the said deed. Therefore, the deed of assignment is valid
and the assignment of the property by the deceased, as assignor, to RKM
Sharbudeen, as assignee, is valid.

D [23] At this point, it is important to note that the deed of assignment serves
only the purpose of assignment of the property to RKM Sharbudeen. By no
means can the deed of assignment be taken as the instrument of transfer to
effect the transfer of the property by the second respondent to RKM
Sharbudeen. Thus, clearly the question of such transfer not taking effect under
E s 4A of the Stamp Act 1949 does not even arise.

[24] For the purpose of effecting any transfer of property under the NLC, it
is the memorandum of transfer or Form 14A which is the instrument of
transfer (see ss 215, 217 and 218 of the NLC).

F [25] In the present case, as submitted by learned counsel for the second
respondent, it is undisputed that based on the notice of
adjudication/assessment ('Notis Taksiran Pindah Milik Harta Tanah (Duti Ad
Valorem)') dated 9 November 2010 (exh D20 of CBOD B pp 314–315 of *RR*
G *Jld 3*) and the stamp certificate (exh D21 of CBOD B p 316 of *RR Jld 3*), both
duly issued by Lembaga Hasil Dalam Negeri, upon proper
adjudication/assessment by the collector, an ad valorem stamp duty was duly
chargeable and thereafter paid for the Form 14A, to effect the transfer of the
property under the NLC from the second respondent to RKM Sharbudeen.

H [26] We further agree with the second respondent's submission that s 4A of
the Stamp Act 1949 applies to an instrument executed outside Malaysia to
effect a transfer of any immovable property in Malaysia. However, in this case,
the instrument to effect the transfer of the property from second respondent to
I RKM Sharbudeen is in the form of a memorandum of transfer, ie Form 14A
dated 26 October 2016, which was duly executed within Malaysia, and NOT
the deed of assignment.

[27] Thus, the appellant's contention that the deed of assignment executed

outside Malaysia is invalid for alleged failure to comply with s 4A of the Stamp Act 1949, ie that no ad valorem stamp duty was paid on the deed of assignment, does not hold water. This is because the deed of assignment is NOT the instrument that effected the transfer of the property to RKM Sharbudeen, which could allow the appellant to invoke s 4A of the Stamp Act 1949 to invalidate and render ineffective such transfer.

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[28] Hence, we are of the view that the learned JC has rightly made the finding of facts and came to the conclusion that the instrument of transfer in this case is the Form 14A (memorandum of transfer) dated 26 October 2016 and ad valorem stamp duty had in fact been charged on the instrument of transfer upon proper adjudication and had been duly paid for to effect the transfer of the property from the second respondent to RKM Sharbudeen. Therefore, there is no reason why the transfer ought not to have taken effect, as under the Stamp Act 1949, stamp duty is imposed on the instrument and not on a transaction (see Court of Appeal decision in *Pemungut Duti Setem v BASF Services (Malaysia) Sdn Bhd* [2009] 5 MLJ 348; [2010] 4 CLJ 556).

C

D

Indefeasibility of title can only be defeated by a challenge under s 340(2) of the NLC

E

[29] Section 340 of the NLC offers protection to a registered title. In the present case, the property has already been registered in the name of RKM Sharbudeen and he has obtained indefeasibility of title under s 340(1) of the NLC. The only way that such indefeasibility of title can be defeated is to mount a challenge if there exists any of the exceptions laid down in s 340(2) of the NLC.

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[30] We now set out s 340(1) and 340(2) of the NLC which are as follows:

340 Registration to confer indefeasible title or interest, except in certain circumstances.

G

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions this section, be indefeasible.

H

(2) The title or interest of any such person or body shall not be indefeasible —

- (a) in any case of fraud of misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
- (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
- (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

I

A [31] In *Tan Chiu Thoo v Tee Kim Kuay* [1997] 2 MLJ 221, the Federal Court in allowing the appeal held, inter alia, as follows:

B (1) ... The alienation of the lot which was state land had taken effect upon registration of the register of document of title to the respondent in September 1968. Such indefeasibility could only be defeated by any of the specified grounds under s 340 of the NLC or any grounds of equity. In this case, no such ground existed.

C [32] The Court of Appeal in *Rajamani a/p Meyappa Chettiar v Eng Beng Development Sdn Bhd & Ors* [2016] 3 MLJ 660, applied *Tan Chiu Thoo* and at pp 674–675 and 677 stated as follows:

D [49] The first thing to remember with regard to the plaintiff's title is that upon registration, she acquired indefeasibility under s 340(1) of the Land Code and such indefeasibility can only be defeated by any of the specified statutory grounds of fraud et cetera under s 340(2) or other grounds of equity. It cannot be defeated by any other ground.

E [50] None of such statutory grounds under s 340(2) or other grounds of equity exists in relation to the issuance of the plaintiff's document of title. In fact the plaintiff's title was never and has never been impeached by reason of s 340(2) or other grounds of equity.

F ...
 [68] At the risk repetition we must reiterate that the indefeasibility of the plaintiff's title cannot be challenged other than on grounds specified in s 340(2) of the Land Code or other grounds of equity: *Tan Chiu Thoo*. ...

G [33] In the present case, it is clear that the appellant had not challenged the indefeasibility of title of RKM Sharbudeen under the exceptions provided in s 340(2) of the NLC. At the outset of the hearing of this appeal, the appellant had abandoned her issue on forgery of the deed of assignment by the first respondent and confined her appeal to only the issue of non-payment of ad valorem duty on the deed of assignment to render it invalid, null and void to effect the transfer of the property. Therefore, the appellant would not be able to rely on the exceptions in the case of fraud or forgery as provided in s 340(2)(a) and (b) of the NLC respectively.

I [34] The other exception under s 340(2)(b) of the NLC which is of relevance to the instant appeal, is that the registration or transfer was 'obtained by means of an insufficient or void instrument'. The void instrument referred to in the context of the factual matrix of this case is the memorandum of transfer in Form 14A. In our view, the deed of assignment (exh P6) is not a conveyance document as envisaged in ss 215, 217, 218, and in particular, s 340(2) of the NLC. Thus, the transfer of the property by the second respondent to RKM Sharbudeen cannot be invalidated by questioning the validity of the deed of

assignment (exh P6) which is not the conveyance document.

A

[35] From a reading of the relevant provisions of the Stamp Act 1949 together with the NLC, we agree with the respondents that the title of RKM Sharbudeen and his estate cannot be defeated by merely questioning the invalidity of the deed of assignment, instead of challenging it mainly on Form 14A.

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[36] For the reasons stated above, we find no merit in the appeal to warrant appellate intervention. Accordingly, we dismiss the appeal of the appellant with costs of RM15,000 to the first respondent, and RM10,000 to the second respondent, subject to payment of the allocatur fee. The deposit is to be refunded to the appellant.

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Appeal dismissed with costs.

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Reported by Afiq Mohamad Noor

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